

R.D. # 0002-99
Parsippany, N. J.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22

**STARWOOD LODGING, SLC, LLP,
INC. d/b/a SHERATON TARA HOTEL¹**

Employer

and

CASE 22-RC-11669

**HOTEL EMPLOYEES AND
RESTAURANT EMPLOYEES, LOCAL 69, AFL-CIO**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,² the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer (sometimes also referred to as the Hotel) is engaged in commerce within the meaning of the Act and will effectuate the purposes

¹ The name of the Petitioner appears as amended at the hearing.

² Briefs filed by the Employer and the Petitioner were duly considered.

of the Act to assert jurisdiction herein.³

3. The Petitioner (sometimes also referred to as the Union), the labor organization involved, claims to represent certain employees of the Employer.⁴

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees, including front desk clerks, bellmen, gift shop employees, concierge, PBX operators, reservation clerks, banquet captains, coffee break captain, beverage supervisor, housemen supervisors, executive stewards, Business Center clerk, beverage employees and bartenders employed at the Tipperary Pub, restaurant supervisors, kitchen supervisors, health club supervisors, health club lifeguards, laundry attendants, the purchasing department employees, the engineering department employees, and the employee cafeteria cooks employed by the Employer at its Parsippany, New Jersey facility excluding all office clerical employees, executive sous chef, sous chef, housekeeping supervisors, managerial employees, guards, and all other supervisors as defined in the Act.⁵

The Employer declined to stipulate that the Petitioner is a labor organization under the Act. With regard to the labor organization status of the Petitioner, there are essentially only two requirements for a party to meet to achieve the status of a labor

³ The parties stipulated, and I find, that the Employer, a Virginia corporation, is engaged in the provision of hotel services at its Parsippany, New Jersey facility, the only facility involved herein. The parties further stipulated, and, I find, that during the preceding twelve months, the Employer derived gross revenue in excess of \$500,000, and during the same period of time, the Employer purchased and caused to be delivered to its Parsippany, New Jersey facility goods and services valued in excess of \$50,000 directly from suppliers located outside the State of New Jersey.

⁴ The status of the Petitioner as a labor organization within the meaning of Section 2(5) of the Act will be discussed, *infra*.

organization as defined by Section 2(5) of the Act: first, it must be an organization in which employees participate; and second, it must exist for the purpose, in whole or in part, of dealing with employers concerning wages, hours, and other terms and conditions of employment. *Alto Plastics Manufacturing Corp.*, 136 NLRB 850 (1962). In this regard, the record reveals that employees have participated in the Petitioner with respect to serving on the executive board and negotiating committees, they have also aided in formulating and ratifying collective bargaining agreements. The record also discloses that the Petitioner deals with employers concerning wages, rates of pay, hours and other terms and conditions of employment, has collective bargaining agreements with various employers, and processes grievances on behalf of employees it represents.⁶ In these circumstances, I find the Petitioner to be labor organization under Section 2(5) of the Act. *Ana Colon, Inc.* 266 NLRB 611, 612; *Alto Plastics Manufacturing Corp.*, *supra*.

The parties agree that front desk clerks, bellmen, concierge, PBX operators, reservation clerks, banquet captains, coffee break captain, beverage supervisor, housemen supervisors, Business Center clerk, beverage employees and bartenders employed at the Tipperary Pub, restaurant supervisors, kitchen supervisors, health club supervisors, laundry attendants, the purchasing department employees, and the employee cafeteria cooks should be included in the unit. The parties further agree that office clerical employees, executive sous chef, sous chef, managerial employees, guards, and all other supervisors as defined in the Act should be excluded from the unit.

⁵ There are approximately 270 employees in the unit.

⁶ Any contention that the Petitioner is not a labor organization within the meaning of the Act because it was previously placed under trusteeship by its International is misplaced. See *Terminal System, Inc.*, 127 NLRB 979 (1960).

In dispute in this proceeding are whether five classifications of employees should be included in the unit. The Employer seeks to exclude executive stewards and housekeeping supervisors from the unit, asserting they are supervisors as defined in Section 2(11) of the Act. Additionally, the Employer seeks to include in the unit health club lifeguards and employees in the engineering department, asserting these employees share a requisite community of interest with the other employees and should be included in the unit. The Petitioner seeks to include in the unit three gift shop employees, asserting they share a community of interest with the other employees included in the unit. Each classification requires an independent analysis to determine if inclusion in the unit is appropriate.

I. SUPERVISORY ISSUES:

It is the Petitioner's position that the executive steward and housekeeping supervisors do not possess any indicia of supervisor authority and should therefore be included in the petitioned-for unit. For its part, the Employer asserts that these individuals are supervisors within the meaning of Section 2(11) of the Act and should be excluded.

Section 2(11) of the Act defines a supervisor as:

[A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

In *Providence Hospital*, 320 NLRB 717, 725 (1996), the Board held, "In enacting Section 2(11) of the Act, Congress distinguished between true supervisors who are vested with 'genuine management prerogatives,' and 'straw bosses, lead men and set-up men' who are protected by the Act even though they perform 'minor supervisory duties.'" *Id.* at 724 citing *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 280-81 (quoting S. Rep. No. 105, 80th Cong., 1st Sess., 4 (1947)). The legislative history instructs the Board not to construe supervisory status too broadly because an employee who is deemed a supervisor loses the protection of the Act. See *Providence Hospital*, *supra*, 320 NLRB at 725; *Warner Co. v. NLRB*, 365 F. 2d 435, 437 (3rd Cir. 1966), cited in *Bay Area-Los Angeles Express*, 275 NLRB 1063, 1073 (1985). While the possession of any one of the functions enumerated in Section 2(11) is sufficient to establish supervisory status, Section 2(11) requires that a supervisor must perform those functions with independent judgment, as opposed to in a routine or clerical manner. *Bay Area-Los Angeles Express*, *supra* at 1073 and cases cited therein. The burden of proving supervisory status rests on the party contending that status. *Midland Transportation Co.*, 304 NLRB 4 (1991); *Tucson Gas & Electric Co.*, 241 NLRB 181 (1979). Absent detailed, specific evidence of independent judgment, mere inference or conclusory statements without supporting evidence are insufficient to establish supervisory status. *Quadres Environmental Co.*, 308 NLRB 101, 102 (1992)(citing *Sears Roebuck & Co.*, 304 NLRB 193 (1991)). Further, whenever evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, the Board will find that supervisory status has not been established on the basis of those indicia. *The Door*, 297 NLRB 601 (1990)(quoting *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989)). Furthermore, it is well established that an

employee's title, standing alone, is not indicative of supervisory status for purposes of the Act. *John N. Hansen Co.*, 293 NLRB 63 (1989); *Waterbed World*, 286 NLRB 425 (1987).

A. *EXECUTIVE STEWARD:*

The Employer maintains that Cleon Webster, the executive steward, is a supervisor and should therefore be excluded from the unit. According to Thomas Healy, Director of Operations, the executive steward is a recently created position. Prior to his promotion, Webster was an hourly employee and also received gratuities. When Webster was promoted, he received a wage increase⁷ and is now classified as an overtime eligible manager, which means his annual wage is broken down into an hourly wage and he is eligible for overtime if he works over fifty hours a week.

As the executive steward, Webster is responsible for the stewarding department, which encompasses the employees who wash dishes, clean the floors and count inventory for the kitchen. Webster is also responsible for doing weekly sanitary inspections and preparing the kitchen for the annual ASI inspection.⁸ Healy testified that as the executive steward, Webster orders all cleaning supplies and all equipment necessary for cleaning and has input in what china, glass and silver the hotel orders. Webster is also responsible for maintaining absenteeism documentation for the employees in his area. Webster also has the authority to prepare write-ups for poor performance or related performance issues. These documents are then forwarded to Human Resources and/or to the executive chef. Additionally, if the stewards are not properly cleaning the kitchen or not properly storing the food, Webster has the authority to report these inadequacies to the director.

⁷ The amount of the wage increase is unknown.

While Healy contended, in a conclusory fashion, that Webster has the authority to discipline employees and to recommend discipline, there was no specific evidence that Webster had exercised any such authority.

Additionally, Healy testified that the executive steward interviews prospective employees, and makes recommendations as to whether or not the candidates should be hired. However, Healy could not point to specific instances in which Webster's recommendation to hire an individual were followed. In the last six to eight months, there have been two or three new hires in the steward department.⁹ Once employees are hired, Webster ensures that all of the necessary paperwork is forwarded to the Human Resources department

With regard to work assignments, the record reflects that Webster is responsible for scheduling the stewarding department. In this regard, he prepares a schedule which is then approved by the chef and/or the director. Both the chef and the director have the authority to make changes to the work schedule. Webster assigns individual stewards to particular job tasks based on what work needs to be done and who is available to do the work. Webster can authorize an employee to work overtime, although there was no evidence that he has exercised that authority since he has been promoted to the position, nor was there evidence that Webster could compel an employee to work overtime.

The Employer claims that Webster exercises sufficient authority to assign, responsibly direct and discipline employees to justify excluding him as statutory supervisor. The assignments at issue are assignments to specific tasks, not assignments

⁸ The record is silent as to what an ASI inspection entails.

⁹ While Webster did not testify, Healy testified that Webster met and interviewed the candidates before they were hired. There is no evidence that Webster recommended that these individuals be hired.

involving overall job responsibilities. Whether such "assignments" are denoted by the statutory term "assignment," as opposed to the term "responsibly to direct" is not clear. See *Providence Hospital*, supra, 320 NLRB at 727. However, under either statutory phrase the assignments at issue here are not characteristic of those of "supervisors who share management's power or have some relationship or identification with management," and are thus distinguishable from "skilled nonsupervisory employees whose direction of other employees reflects their superior training, experience or skills." See *id.* at 729. The Board in *Providence Hospital* quoted with approval the court in *NLRB v. Security Guard Service*, 384 F. 2d 143, 151(5th Cir. 1967):

If any authority over someone else, no matter how insignificant or infrequent, made an employee a supervisor, our industrial composite would be predominantly supervisory. Every order-giver is not a supervisor. Even the traffic director tells the president of a company where to park his car.

The tasks to which the executive steward assigns employees, such as washing dishes, and cleaning floors, are routine. The executive steward assigns tasks to employees based on what needs to be done and who is available. There was no showing that independent judgment was required to select among employees. See *Clark Machine Corp.*, 308 NLRB 555, 555-56 (1992) (assignments are routine when based on employees' skills that are well known). There was no evidence that it was necessary to resolve conflicts or problems with respect to the tasks to be performed or the skills or strengths of the employee.

I find that the conclusory testimony on behalf of the Hotel as to the ability of the executive steward to discipline employees is negated by the evidence that the executive

steward has never disciplined an employee or recommended employee discipline.

Supervisory authority can not be found based on an alleged authority that has not in fact been exercised. *Northwest Steel*, 200 NLRB 108 (1972).

The record reflects that during the last six to eight months, there have been no transfers in or out of the steward department, nor have there been suspensions, layoffs, promotions, discipline or discharge of employees in the steward department. There is no evidence that Webster, as the executive steward, has effectively recommended any such action.

For all of the foregoing reasons, I find that the executive steward, Cleon Webster is not a supervisor within the meaning of the Act and, therefore, will be included in the unit.

B. HOUSEKEEPING SUPERVISORS:

The Petitioner maintains that the housekeeping supervisors, which were excluded from the unit pursuant to the directed election in case 22-RC-11450, should now be included in the unit due to changed circumstances. The Employer however, contends that the housekeeping supervisors' responsibilities are the same as they existed at the time of the directed election in case 22-RC-11450, and should accordingly be excluded from the unit.

Susan Sears, housekeeping supervisor, testified that there are four housekeeping supervisors, and approximately 27 housekeepers. Each supervisor is assigned to work with five to seven housekeepers who work on the same floor. Housekeeping supervisors do not usually clean rooms themselves. The housekeeping supervisors inspect the work of the housekeepers and may direct a housekeeper to return to a room if not completed in

a satisfactory manner. The housekeeping supervisors evaluate the skill of housekeepers and inform the managers who is cleaning well and who is a good candidate for the clean team.

Sears testified that the "clean team," is a group of housekeepers whose rooms are only spot-checked, rather than regularly inspected by housekeeping supervisors. A member of the "clean team" earns more than the other housekeepers.¹⁰ All housekeepers have a quota of 16 rooms per day. If the housekeepers clean more than 16 rooms, they receive an additional \$3.50 per room. While Sears does not assign specific housekeepers to specific rooms, the housekeeping supervisors do have the authority to ask the housekeepers to clean more than 16 rooms. Sears further testified that her job duties have not changed since the last direction of election.

Sears testified that she has the ability to write-up a housekeeper for disciplinary action, but has never exercised that right. She has never been involved in the layoff or promotion of housekeepers. Sears did recall an incident about 1½ years ago when one housekeeping supervisor reported that an employee cursed at the supervisor. Sears believes that employee was fired, but does not know whether the supervisor recommended termination or any other form of discipline. Apart from this occurrence, housekeeping supervisors do not discipline or discharge employees.

Sears testified that she is not involved at all in the hiring of housekeepers. Three or four years ago, Sears recommended that a housekeeper be transferred to a different floor, and that recommendation was followed. Approximately three months ago, Sears

¹⁰ Sears did not know the wage differential.

recommend that an individual who was previously laid off be rehired, and her recommendation was followed.

While merely inspecting and reporting the work of others does not confer supervisory authority, *Somerset Welding and Steel*, 291 NLRB 913, 914 (1988), the Board has recognized supervisory status where an evaluation affects the wages paid to employees. *Bayou Manor Health Center, Inc.*, 311 NLRB 955 (1993). Since the housekeeping supervisors may increase the wages of the housekeepers by recommending them to the “clean team,” and to clean more than 16 rooms, I find that they possess the requisite indicia of a statutory supervisor and, they will be excluded from the unit found appropriate herein.

II. COMMUNITY OF INTEREST ISSUES:

In the hotel industry, the Board has applied the same traditional community of interest criteria used in other industries. The Board considers such factors as “the distinctions in skills and function of particular employee groups, their separate supervision, the employer’s organizational structure and differences in wages and hours as well as integration of operation and employee interchange and contact.” *The Westin Hotel*, 277 NLRB 1506, 1508 (1986); see generally, *Atlanta Hilton & Towers*, 273 NLRB 87, 90 (1984), modified on other grounds, 275 NLRB 1413 (1985), and *77 Operating Co.*, 160 NLRB 927, 929-30 (1966), enforced, 387 F. 2d 646 (4th Cir. 1967). The integral issue here is whether the employees in the classifications listed below share a community of interest with the petitioned-for employees to such a degree as to render their exclusion from the unit inappropriate.

A. HEALTH CLUB LIFEGUARDS:

The Employer maintains that the four lifeguards employed at the hotel share the requisite community of interest with the other employees in the unit and should be included in the unit. Whereas the Petitioner maintains that the lifeguards possess special skills, are required to be certified in CPR and licensed by the state, and have limited interaction with the other unit employees, and should therefore be excluded.

The lifeguards monitor the activity in the pool to make sure people who are swimming are safe. The lifeguards are also responsible for reading the chlorine levels of the pool every hour, and for vacuuming the pool. The record reflects that occasionally, lifeguards straighten out the chairs and squeegee the tile if there is excessive water on the floor. Lifeguards are supervised by the health club manager who also supervises the attendants that work in the health club area, and the aerobics instructors, who are members of the unit.

The records shows that if a lifeguard calls out sick, other employees in the hotel may fill in, provided they are certified. Lifeguards share common benefits and working conditions with Hotel employees. Based upon the above and the record as a whole, I conclude they share a sufficient community of interest with other unit employees warranting their inclusion in the appropriate unit.¹¹

B. GIFT SHOP EMPLOYEES:

The Petitioner argues that the three gift shop employees should also be included in the unit as they share a community of interest with the other employees in the unit. The gift shop employees are responsible for overseeing the gift shop, which includes monitoring the inventory, selling items that are in the gift shop and preparing requisitions

and purchase orders. The front office manager supervises the three gift shop employees. The front office manager also supervises PBX employees, front desk employees, and the mail staff, all of whom are included in the unit. Gift shop employees fill in for employees working in other areas of the hotel, provided they are trained and qualified, although the record does not state how frequently this occurs. Similarly, any hotel employee, trained in the use of the registers, could potentially cover the gift shop while the regular gift shop employees are on vacation. They also share common benefits and working conditions with Hotel employees. Based upon the above and the record as a whole, I conclude they share a sufficient community of interest with other unit employees warranting their inclusion in the unit.

C. ENGINEERING DEPARTMENT EMPLOYEES:

There are six employees in the engineering department which the Petitioner seeks to have excluded from the unit. While the engineering department employees were included in the unit directed in Case 22-RC-11450, the Petitioner now asserts that these employees are not traditionally part of its jurisdiction, and are generally represented by other Unions with other affiliations in organized facilities. The Petitioner further asserts that these employees are required to be licensed and/or specially trained and have a different salary level and skill that is not interchangeable with the other employees in the facility. For its part, the Employer argues that these employees share a similar community of interest with the other employees which warrants their inclusion in the over-all unit.

¹¹ *Cf. Stouffer's Cincinnati Inn, 225 NLRB 1196 (1976)* (lifeguards excluded from unit based on lack of community of interest because lifeguards were seasonal employees without an expectation of rehire).

Edward Costello, chief engineer, testified that there are eight employees in the engineering department including himself and his assistant chief engineer, John Caruthers.¹² Costello testified that there is no mandatory licensing requirement for the employees in the department; however, someone in the department must have a license for the boiler.¹³ One other employee, Bill Casper, has a license¹⁴.

Costello testified that while the engineering department is located in the basement of the hotel directly next to housekeeping, not only is there is substantial interaction between the engineering department and the housekeeping department, the engineering department deals directly with almost every employee working in the hotel because the engineering department is involved in all aspects of maintenance procedures. For example, the engineering employees maintain the equipment at the front desk such as phones, fax, key machine, fix anything in the lobby and anything that is broken in the rooms. The engineering department also works closely with the kitchen staff with regard to maintaining the dish machine, proper handling of waste removal and recycling removal. Additionally, the engineering department works in conjunction with the lifeguards on the pool to ensure that the pool is safe and clean.

Moreover, Costello testified that the engineering department employees get the same benefits as the other employees in the other departments. The engineers are hourly employees, and Costello believes they are close to the top of the pay scale due to their skill levels. Marie Louise Breshinsky, director of human resources, testified that the banquet employees and restaurant employees get paid more than the engineering

¹² It is stipulated that Costello and Caruthers are excluded from the unit because of their supervisory status.

¹³ Caruthers has a black seal licensee for the boiler.

¹⁴ The record is silent as to what type of license Mr. Casper has.

department employees, because the former receive gratuities. The engineering department employees and the front desk employees earn comparable hourly wages, between \$8.50 and \$11.00.

Employees have the ability to transfer out of the engineering department into another department in the hotel and vice versa. For example, Brian Hunter began working in the engineering department, but now works in the restaurant area. Luis Sepaza transferred to the engineering department from the kitchen.

The record clearly established that the engineering department employees have extensive contact with the other hotel employees and share similar terms and conditions of employment among all hotel personnel. Furthermore, the engineering department employees spend their time in areas of the hotel occupied by other hotel employees, and they frequently repair equipment in proximity to other employees. While there are circumstances in which the Board has found appropriate separate units for maintenance and engineering employees, those cases involved skilled employees. In the instant matter, the record reflects that the engineering employees' duties are limited to changing light bulbs, repairing broken banquet tables, fixing the reception on televisions, maintaining the temperature in the banquet halls, repairing the fax machine, and other routine maintenance functions. There is no evidence that these employees are skilled craftsmen, such as plumbers or electricians, who might well not share a community of interest with the other employees in the unit. I therefore conclude that the engineering department employees share the requisite community of interest to warrant their inclusion in the overall unit. See *Westin Hotel*, 277 NLRB 1506 (1986).

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **Hotel Employees and Restaurant Employees, Local 69, AFL-CIO**.

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v.*

Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters shall be filed by the Employer with undersigned, who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the NLRB Region 22, 5th Floor, 20 Washington Place, Newark, New Jersey 07102, on or before February 19, 1999. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by February 26, 1999.

Signed at Newark, New Jersey this 12th day of February, 1999.

/s/William A. Pascarell

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